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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/804,403	03/12/2001	Aaron Strand	8362-DIV	1089

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EXAMINER

MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 08/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/804,403

Applicant(s)

STRAND ET AL.

Examiner

Robert Madsen

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 May 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
4a) Of the above claim(s) 125-143 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) See Continuation Sheet is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date December 22, 2003.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Continuation of Disposition of Claims: Claims pending in the application are 1,2,6-9,14,16,18,19,21,23,41,42,46-49,54,56,58,59,61,75,79,82-86,93,104 and 107-147.

Continuation of Disposition of Claims: Claims rejected are 1,2,6-9,14,16,18,19,21,23,41,42,46-49,54,56,58,59,61,75,79,82-86,93,104,107-124 and 144-147.

DETAILED ACTION

1. The Amendment filed May 22, 2004 has been entered. Claims 76,77,100-102 have been canceled. Claims 107-147 have been added claims 1,2,6-9,14,16,18,19,21,23,41,42,46-49,54,56,58,59,61,75,79,82-86,93,104,107-147 remain pending in the application.

Election/Restrictions

2. Newly submitted claims 125-143 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Applicant's previous claims are directed to a *single folded sheet* with areas of weakness on either side of the fold, while claims 125-143 are directed to two panels, each with an area of weakness across the panels, that are sealed together at the top and side. This sealed panel structure is distinct from the previously elected fold structure.

3. Since applicant has received an action on the merits for the originally presented invention (i.e. a folded sheet having the areas of weakness), this invention has been constructively elected by original presentation for prosecution on the merits.

Accordingly, claims 125-143 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1,2,6-9,14,21,23,41,42,46,47,48,49,54,61,110-121,144-147 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Branson (US 4927271).
6. Regarding claims 1,2,6-9,14,21,23,41,42,46,47,48,49,54,61, see the rejections made in the Office Action Mailed December 23,2003. With respect to the new limitations of claims 1 and 61, Branson teaches tracks located in the fold structure (as shown in Figure 1 items 34,36 are in the fold, as well as in Figure 2, the fastener structure item 12 extends into the fold beyond the seal item 62). Additionally, the margins of the skirt structures are a portion of the skirt portion attached to the bag (noted by seals 62 and 64) are located a distance from the actual fastener elements (items 36 and 34) and are at opposed location as shown in Figure 1.
7. Regarding claim 144, Branson teaches a web (i.e. hood) with one fold structure, two predetermined tear areas (i.e. items 38/40), and an opening opposite the fold structure (see Figure 5, Figure1, Figure 2). Branson teaches two releasably engageable fastener tracks (see 34/36 in Figure 5) with integral skirt portions (i.e. the portion perpendicular to the fastener elements) having distal margins that are coupled to the web (i.e. Branson teaches that the fastener, hood, and bag are all heat fused together at points 62 and 64 as shown in Figure 5, explained in Column 4, lines 31-41). Furthermore, the actual fastener elements (items 36 and 34) extend beyond the areas of weakness into the fold (Figure 1 and Figure 2, where item 12, which denotes the entire fastener/skirt/distal margin structure, extends above and beyond the seal 62).
8. Regarding claims 110-121,145-147, in Figure 1 of Branson the portion of the skirt portion attached at seals 62 and 64 is located a distance from the actual fastener

elements (items 36 and 34). This is further illustrated by Figure 2, where item 12, which denotes the entire fastener/skirt/distal margin structure, extends above and beyond the seal 62. The hood portion beneath the perforated areas 38/40 shown in Figures 1 and 2 would remain part of the bag after the fold portion is removed.

9. Claims 21, 23, 41,42,46-49,54,61, 104,107-109,113-121,144-147 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Thieman et al. (WO 98/45180).

10. Regarding claims 21,23,41,42,46-49,54,61, 104, see the rejections made in the Office Action Mailed December 23,2003.

11. Regarding claim 144, Thieman et al. teach a web (or hood 60) with a fold structure, lines of weakness (items 72), and an opening (below items 72). Thieman et al. teach a fastener structure 70, an integral skirt portion (i.e. the portion that extends down from the fastener elements in Figure 7), and a distal margin (i.e. the point at which the hood 60 is attached to the skirt portion in Figure 7) coupled with the hood (Figures 7/7a, 8 in light of the abstract, Page 4, lines 13-30, and page 6, lines 1-11).

12. Regarding claims 107-109,113-121, 145-147, the hood portion beneath the perforated areas 72 shown in Figures 7/7a would remain part of the bag after the fold portion is removed and the fasteners would extend beyond that point.

13. Claims 1,2,6-9, 14,18,19,75,79,82-86,110,122,144,145 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Herber et al. (US 5525363).

14. See the embodiments of Figures 18,19, and 19a, with fold 232 of multilaminate web material 204(note the walls of the pouch are multilaminate in Column 5, lines 48-90), line of perforation 254 on either side of the fold (Column 2, lines 25-39, Column 10,lines 47-67), distal portions 214/216, fasteners 218/220, opening formed at 226/238, and the pouch contains cheese (See Abstract). Also see Column 2, line 47 to Column 3, line 47, Column 5, lines 3-60 Column 8, line 28 to Column 9, line 57).
15. Note that this new rejection of claims 1,2,6,7-9, 14,18,19, 75,79,82-86 was necessitated by the amendment that overcame the previously presented rejections under Boekmann and May.

Claim Rejections - 35 USC § 103

16. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
17. Claims 16 and 93 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herber et al. (US 5525363) as applied to claims 1,2,6-9, 14,18,19,75,79,82-86,110,122, 144,145, further in view of Hayashi et al. (US 6074097).
18. Herber et al. teach a linear area of weakness comprising perforations, but is silent in teaching scoring. Hayashi et al also teach reclosable food bags with an area of weakness (Column 20, lines 10-26). Hayashi is relied on as evidence of the conventionality of providing either perforations or scoring (i.e. grooves), as recited in claim 56(Column 18, lines 31-40, Figure 10). Therefore, once it was known to include an area of weakness in combination with a reclosable bag, to select any particular type

of weakness such as perforations or scoring, would have been an obvious design choice since Hayashi et al. teach either perforations or scoring are possible.

19. Claim 56 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thieman et al. (WO 98/45180) as applied to claims 21, 23, 41,42,46-49,54,61, 104,107-109,113-121,144-147 above, further in view of Hayashi et al. (US 6074097).

20. See the rejection of claim 56 made in the Office Action Mailed December 23,2003.

21. Claims 58 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thieman et al. (WO 98/45180) as applied to claims 21, 23, 41,42,46-49,54,61, 104,107-109,113-121,144-147 above, further in view of May (US 5725312).

22. See the rejections of claims 58 and 59 made in the Office Action Mailed December 23,2003.

23. Claims 75,79,82-86,122-124 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thieman et al. (WO 98/45180) in view of Hustad et al. (US 5456928).

24. Regarding claims 75,79,82-86,122-124, Thieman et al. teach a web (or hood 60) with a fold structure, lines of weakness (items 72), an opening (below items 72), a fastener structure 70, an integral skirt portion (i.e. the portion that extends down from the fastener elements in Figure 7), a distal margin (i.e. the point at which the hood 60 is attached to the skirt portion in Figure 7) coupled with the hood (Figures 7/7a, 8 in light of

the abstract, Page 4, lines 13-30, and page 6, lines 1-11), and the hood portion beneath the perforated areas 72 shown in Figures 7/7a would remain part of the bag after the fold portion is removed to serve as part of the fill opening and the fasteners would extend beyond that point. Although Thieman et al. are silent in teaching the bag contains cheese as recited in claim 75, Thieman et al. teach an improvement over conventional tamper evident reclosable bags such as the ones taught by Hustad et al. Hustad et al. teach conventional tamper evident reclosable bags may be used for cheese (See Column 1, lines 8-21). Therefore, it would have been obvious to include cheese in the bag of Thieman et al. since Thieman et al. teach the bag is an improvement over conventional tamper evident reclosable bags such as the bags taught by Hustad et al and Hustad et al. teach such bags are conventionally used for storing cheese, among other foods.

25. Note that this new rejection of claims 75,79,82-86 was necessitated by the amendment that overcame the previously presented rejections under Boekmann and May, as well as the new dependent claims 122-124.

Response to Arguments

26. Applicant's arguments filed May 22,2004 with respect to the rejections of claims 75-77,79,82-86 and 100 under 35 U.S.C. 102(b) as being clearly anticipated by Dobreski (US 5682730) and claims 75-77,79,82-86 and 100 under 35 U.S.C. 102(b) as being clearly anticipated by May (US 5725312) have been fully considered and are persuasive because Dobreski and May fail to teach the fastener tracks extended above

the tear areas and into a fold structure. Therefore, the rejections have been withdrawn. Likewise, the rejection of claim 93 under 35 U.S.C. 103(a) as being unpatentable over May (US 5725312) further in view of Hayashi et al. (US 6074097) has also been withdrawn. However, upon further consideration, a new ground(s) of rejection as set forth above.

27. Applicant's arguments filed May 22, 2004 with respect to Boeckmann et al. have been fully considered and are persuasive because Boeckmann et al., while teaching a fastener structure that extends into the fold *structure* as previously recited, fail to teach the fastener is located in the fold as currently recited. The examiner understands the fold structure to the structure sheets 11 and 12 up to fold 14, whereas item 14 is the fold, and based on Figure 1, Boeckmann et al. show the fastener structure is not "in" the fold per se. Therefore, the rejections of claims 1,2,6,7-9, 14,18,19,100 under 35 U.S.C. 102(b) as being clearly anticipated by Boeckmann et al. (US 4846585) and claim 16 under 35 U.S.C. 103(a) as being unpatentable over Boeckmann et al. (US 4846585) further in view of Hayashi et al. (US 6074097) have been withdrawn. However, upon further consideration, a new ground(s) of rejection as set forth above.

28. Applicant's arguments filed May 22, 2004 with respect to Branson have been fully considered but they are not persuasive.

29. Applicant states that Figure 1 of Branson is of such poor quality because the bag lines are drawn without any thickness. The argument is moot since the rejections do not rely on Figure 1 for teaching any thickness of bag material and it is noted that the bag material thickness is not recited in the rejected claim(s). Although the claims are

interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Rather Figure 1 was cited in the Office Action to draw the applicant's attention to the location of various features of the bag proximate to one another (e.g. the hood or fold, line of perforations, and fastener extending past the perforations into the fold).

30. Applicant further asserts that it is immediately obvious to one skilled in the art that the perforations 38 and 40 are located squarely between heat-sealing mechanisms 58 and 60, and thus, Branson would be inoperative. The location of the sealing mechanism is not relevant, as the rejection is based on the bag itself and the location of the seals formed by the sealing mechanism. Applicant's attention is directed to items 62 and 64 of Figure 1, which are the actual heat seals on the bag formed by said mechanisms and are clearly located below the perforations 38 and 40. This would make Branson operable. Additionally, Figure 2 supports this conclusion. Note that seal line 62 is clearly below the line of perforation 38. Thus, Branson's drawings are enabling for the bag structure.

31. With respect to Branson not teaching a distal portion or skirt structure, as stated in the Office Action filed May 22, 2004, the skirt portion is understood to be the part of the fastener attached to the bag that is above and below the fasteners. Applicant's specification states the skirt structure is either integral or coupled to the fasteners (e.g. Summary of the Invention). Thus, the examiner understands the "backs" of Branson to be integral with the fastener elements, and thus are skirt portions. These skirt portions are indeed "coupled" to the hood material (shown in Figure 5, explained in Column 4,

lines 31-41), since Branson teaches that the fastener, hood, and bag are all heat fused together at points 62 and 64. Furthermore, in Figure 1 of Branson the portion of the skirt portion attached at seals 62 and 64 is located a distance from the actual fastener elements (items 36 and 34). This is understood to be the distal margin. This is further illustrated by Figure 2, where item 12, which denotes the entire fastener/skirt/distal margin structure, extends above and beyond the seal 62. Thus Branson meets both the skirt and the distal portion limitations.

32. With respect to Branson not teaching a fin structure, based on applicant's figure 3, a fin structure is defined as a portion of the web material that lies between the opening and line of weakness where the distal portion is coupled to the web of material. In light of the previous paragraph, Branson teaches a fin structure as the portion of the hood extending below the seal 62/64 that is coupled to the distal portion (and fastener) and panel.

33. Applicant further argues that Branson's hooded enclosure does not teach an opening to allow the bag to be filled, but it is noted that this is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). None of the independent claims 1,21,41, and 61 requires a bag formed from the web sheet. Instead the claims recite a bag merely "comprises" the sheet. The statements "a bag comprising a sheet" and "a bag formed by a sheet" are not equivalent. Additionally, claims 1,41,and 61 do not even require the opening of the web sheet material to be associated with any type of bag filling.

Independent claims 1,41, and 61 recite a bag comprising "a web of sheet material comprising... an opening" and the "reclosable bag capable of being filled", and thus read on a bag with a hooded structure. Furthermore, although claim 61 recites sidewall structures with inner surfaces, this limitation is still met by the hooded structure. Claim 21, recites the one sheet material comprises "a fill opening". It is noted that Branson also meets this limitation since the hood portion beneath the perforated areas 38/40 shown in Figures 1 and 2 would remain part of the bag after the fold portion is removed and serves as a part of the fill opening.

34. Applicant's arguments filed May 22,2004 with respect to Thiemann have been fully considered but they are not persuasive.

35. Applicant argues that Thieman does not teach the hood defines an opening to allow the bag to be filled, but it is noted that this is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). None of the independent claims 21,41, 61, and 104 requires a bag formed from the web sheet. Instead the recitation is the bag "comprises" the sheet. The statements "a bag comprising a sheet" and "a bag formed by a sheet" are not equivalent. Additionally, claims 41,61, and 104 do not even require the opening of the web sheet material to be associated with any type of bag filling. Independent claims 41 and 61 recite a bag comprising "a web of sheet material comprising... an opening" and the "reclosable bag capable of being filled", and thus read on a bag with a hooded structure. Furthermore, although claim 61 recites sidewall structures with inner

surfaces, this limitation is met by the hooded structure. Claim 21, recites the one sheet material comprises "a fill opening". It is noted that Thieman also meets this limitation since the hood portion beneath the perforated areas 72 shown in Figures 7/7a would remain part of the bag after the fold portion is removed and serves as a part of the fill opening.

36. Applicant also states that Thieman fails to teach the recited fastener/fin/coupling portions and how the fastener is attached to the bag. As cited in the rejection, support is found in Figures 7/7a,8 in light of the abstract, Page 4, lines 13-30, and page 6, lines 1-11. Thieman teaches a fastener structure 70, a skirt portion (i.e. the portion that extends down from the fastener elements in Figure 7), a distal margin (i.e. the point at which the hood 60 is attached to the skirt portion in Figure 7), and a fin structure (i.e. the portion of hood 60 which extends below perforations 72 and is attached to the distal portion of the fastener structure in Figure 7). Thieman also teaches the fastener is attached to the bag as shown in figure 8 in light of page 6, lines 1-11.

Conclusion

37. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


38. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

39. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

40. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen
Examiner
Art Unit 1761



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